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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 09-50026 (REG)

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In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.,
f/k/a GENERAL MOTORS CORP., et al.
Debtors.

- - - - -x

U.S. Bankruptcy Court
One Bowling Green
New York, New York

July 27, 2011
9:54 AM

B E F O R E:
HON. ROBERT E. GERBER
U.S. BANKRUPTCY JUDGE

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HEARING re Trustee's report on final fees.

HEARING re Debtors' 147th Omnibus objection to claims (claims
for equity interests).

HEARING re Debtors' 148th Omnibus objection to claims (claims
for equity interests).

HEARING re Debtors' 151st Omnibus objection to claims (claims
for equity interests).

HEARING re Debtors' 152nd Omnibus objection to claims (claims
for equity interests).

HEARING re Debtors' 154th Omnibus objection to claims (claims
for equity interests).

HEARING re Debtors' 155th Omnibus objection to claims (claims
for equity interests).

HEARING re Debtors' 169th Omnibus objection to claims (Welfare
benefits claims of retired and former salaried and executive
employees).

1 HEARING re Debtors' 176th Omnibus objection to claims (Welfare
2 benefits claims of retired and former salaried and executive
3 employees) .

4

5 HEARING re Debtors' 177th Omnibus objection to claims (Welfare
6 benefits claims of retired and former salaried and executive
7 employees) .

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9 HEARING re Debtors' 178th Omnibus objection to claims (Welfare
10 benefits claims of retired and former salaried and executive
11 employees) .

12

13 HEARING re Debtors' 187th Omnibus objection to claims
14 (qualified defined benefits pension benefits claims of former
15 salaried and hourly employees) .

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17 HEARING re Debtors' 210th Omnibus objection to claims (claims
18 for equity interests) .

19

20 HEARING re Debtors' 211th Omnibus objection to claims (tax
21 claims assumed by General Motors LLC) .

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23 HEARING re Debtors' 214th Omnibus objection to claims
24 (Administrative proofs of claim for equity interests) .

25 Transcribed by: Penina Wolicki

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A P P E A R A N C E S :

WEIL, GOTSHAL & MANGES, LLP

Attorneys for Debtors

767 Fifth Avenue

New York, NY 10153

BY: JOSEPH H. SMOLINSKY, ESQ.

STUTZMAN, BROMBERG, ESSERMAN & PLIFKA, P.C.

Attorneys for Dean M. Trafelet

2323 Bryan Street

Suite 2200

Dallas, TX 75201

BY: HEATHER PANKO, ESQ. (TELEPHONICALLY)

GODFREY & KAHN, S.C.

Examiner

One East Main Street

Suite 500

Madison, WI 53701

BY: BRADY C. WILLIAMSON, ESQ. (TELEPHONICALLY)

ALSO PRESENT:

HUGO ANDERSON, Pro Se (TELEPHONICALLY)

CLAUDETTE ELLISON, Pro Se

JOHN A. MALLS, Pro Se (TELEPHONICALLY)

STELLA MALLS, Pro Se (TELEPHONICALLY)

LARRY MASSEY, Pro Se (TELEPHONICALLY)

DAVID A. RADKE, Pro Se (TELEPHONICALLY)

DALE R. SPIRNAK, Pro Se (TELEPHONICALLY)

SARAH THOMPSON, Barclays Capital, Inc. (TELEPHONICALLY)

CAROLL WATERS, Pro Se (TELEPHONICALLY)

ALAN C. ZAK, Pro Se (TELEPHONICALLY)

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P R O C E E D I N G S

THE CLERK: All rise.

THE COURT: Good morning. Have seats.

Okay, General Motors Corporation, Motors Liquidation Company. Mr. Smolinsky?

UNIDENTIFIED SPEAKER: Hello? Hello?

THE COURT: I need quiet on the telephone, gentlemen.

UNIDENTIFIED SPEAKER: Hello?

UNIDENTIFIED SPEAKER: Yes, this is --

THE COURT: Gentlemen, this is the judge. Did I make myself clear? I need quiet on the telephone.

Go ahead, Mr. Smolinsky.

MR. SMOLINSKY: Good morning, Your Honor. Joseph Smolinsky of Weil, Gotshal & Manges for the debtors and post effective date debtors as well as the Motors Liquidation Company GUC trust.

The matters on this morning's calendar fall into two buckets. All of them are claims objections. The first category are claims asserted by equity holders. And the second category are claims asserted by employees for lost welfare benefit claims.

Your Honor, we've made every effort to advise claimants of Your Honor's former rulings on these matters, including at the June 22nd hearing where these similar matters were taken up. What I'd like to do is just go through the

1 agenda and give everyone an opportunity to be heard with
2 respect to their objection.

3 THE COURT: Okay.

4 MR. SMOLINSKY: Your Honor, the first matter on the
5 agenda is the debtors' 147th omnibus objection to claims.
6 That's a motion seeking disallowance of claims for equity
7 interests.

8 THE COURT: Just a minute please, Mr. Smolinsky.

9 I need quiet on the telephones. CourtCall, I don't
10 know if it's coming from your callers or from you, but if we
11 can't solve this problem, we're going to end CourtCall access
12 to the court.

13 Go ahead, Mr. Smolinsky.

14 MR. SMOLINSKY: Thank you, Your Honor. There are
15 three responses to be taken up this morning. One of them is
16 the Ellison response. Ms. Ellison is actually in the courtroom
17 today. We had an opportunity to speak to her before the
18 hearing. This was an informal response, meaning that no
19 documents or papers were submitted. But we had been in
20 telephone contact with her.

21 She's trying to figure out what transpired with her
22 mother's estate. And we're trying to help her in that regard.

23 (Alarm sounding)

24 THE COURT: Ashley, would you please try to found out
25 if this is real or if this is --

1 (Fire alarm announcement)

2 THE COURT: Mr. Smolinsky, I think it's unlikely that
3 this is real, but I'm required to bring the hearing to an
4 interruption, to take this seriously.

5 (Recess from 9:57 a.m. until 10:17 a.m.)

6 THE COURT: Continue, please, Mr. Smolinsky.

7 MR. SMOLINSKY: I believe Mr. Radke was about to
8 present his case.

9 THE COURT: Okay. Mr. Radke?

10 MR. RADKE: Yes, this is David Radke. And as the
11 lawyer for the debtor suggested, my claim was objected to
12 solely on the basis of an equity interest claim. In my view,
13 it's more than that. Just some background. Just I'm not sure
14 how much you know about the case right now or what's in front
15 of you, but this loss of over 500,000 dollars in my case,
16 represents basically a very serious investment in GM's 401(k)
17 plan. And with that loss in a 401(k) plan, I can have -- you
18 can take it from a tax loss matter.

19 But what makes it different from an equity interest
20 claim or a pure equity interest claim is that there's some
21 other several things. Within the plan, Pergamite even
22 purchased the GM stock, which the first purchase was in
23 December of 2007, GM Fidelity who was the manager of the plan,
24 made modifications to what was in the plan with GM's input to
25 remove several of the mutual funds that they used to invest in,

1 you know, Fidelity, Diversified International and -- amongst
2 others. And so I had to liquidate out of those. And at the
3 time, they were basically modifying the plan so there wasn't
4 many good things to invest in. And my assumption was that they
5 removed these plans too, on the basis of that they were too
6 risky.

7 Well, they left GM common stock in the plan, but they
8 put no thought or comments as to risk on that. So I actually
9 began investing in GM at that time for the safety of the --
10 over time would present dividends. And so I never even saw a
11 chance not as much possible in my plan prior to that.

12 The other contributing factor was the fact that after
13 I had purchased GM stock, the plan, the 401(k) plan put
14 restrictions on trading. Now, these changes were such that if
15 you bought and sold stock or a mutual fund, any type of
16 investment that was in the plan, within thirty days you
17 couldn't buy it back. They were trying to limit trading.
18 So -- and if you bought it back within thirty days then they
19 were going to put other trading restrictions on your account
20 for up to a year.

21 So after I bought these GM holdings, and it wasn't
22 pure GM common stock in my account, then I was afraid to sell
23 it because the -- if I sold it then I couldn't buy it back for
24 thirty days, then, you know, any type of market news or rebound
25 in the stock, I would miss out on. So I ended up, you know,

1 holding on to the stock. A lot of the reason was because of
2 that. So that exacerbated my situation. And the losses
3 snowballed, especially after GM ended up taking out their
4 dividends. At that time, you know, there seemed to be no
5 other -- you just tried to hold on.

6 So in my view, GM is complicit with the changes that
7 they were making in their 401 plan that limited my ability to
8 trade the stock normally. This was not an open market
9 situation here. And so I look at that as being something more
10 different that makes it not just a simple equity claim where I
11 was buying something outside of my account and it traded
12 normally.

13 So you know, if GM was taking out these other bonds
14 for risk, they certainly should have limited GM stock buying or
15 at least noted that at the time. And I wouldn't have gotten
16 into GM stock at all. So with this tier selling, you know,
17 that's not a normal market condition. And when you look at
18 this all told, yeah, there's comments, everything that GM made
19 all through this as well, which, you know, the separate lawyer
20 referred to it was part of the statement, right, that GM
21 necessarily didn't have to go bankrupt.

22 But there's more to my case than just those claims.
23 It's these to this -- a 401 and the modifications that they
24 made to the plan. And without any input, without correct input
25 on my -- or on their part, from a risk standpoint. And so I'm

1 looking at these as more than just equity interest claims, and
2 I respectfully ask the Court to consider these loses as an
3 unsecured claim, which they were initially, or that the
4 original percentage of the claim be approved in turn. Thank
5 you. That's where I'm at.

6 THE COURT: All right. Mr. Smolinsky, do you want to
7 respond?

8 MR. SMOLINSKY: It sounds that if Mr. Radke has a
9 claim, that claim would be against the plan or against Fidelity
10 as the manager of the plan. To the extent that he asserts
11 claims that would typically be the type of claims like
12 rescission for -- to reverse the purchase of the stock under
13 510(b) of the Bankruptcy Code, those claims have the same
14 priority as equity.

15 THE COURT: Okay. Then I'm going to need to rule.
16 And the bottom line, Mr. Radke -- and I recognize the harshness
17 of the ruling, and I well recognize how hard this bankruptcy
18 has been on many people, but perhaps especially GM's
19 stockholders.

20 I'm required to sustain the debtors' objection to your
21 claim and to expunge it. The starting point for this analysis,
22 and I'm of course repeating things that I've said in earlier
23 rulings in this courtroom in this case, is that creditors need
24 to be paid ahead of stockholders, and stockholders do not have
25 a right of recovering in a bankruptcy until creditors have been

1 paid.

2 Now, what you have said in substance, Mr. Radke, is
3 that as part of your retirement plan, you got bad advice or
4 indeed may have even been defrauded into acquiring or keeping
5 the GM stock. But that is for the most part, if not totally --
6 and whether it's only for the most part and not totally is
7 something I don't rule on -- a claim against the plan in which
8 the stock was held or the advisor to the plan, which if I heard
9 you right, is Fidelity Investments.

10 I take no position on the rights, if any, that you
11 might have against Fidelity other than to say explicitly that
12 if you want to go against Fidelity, I'm certainly not stopping
13 you. I take no position on that either way.

14 But the second element of your claim, if it is against
15 GM, by understanding principles, it's in connection with -- in
16 substance it's a claim for rescission or unwinding the
17 transaction under which you got the stock or for damages
18 arising from your purchase of the stock.

19 There is a section of the Bankruptcy Code called
20 510(b), which provides -- and I'm quoting, "For the purpose of
21 distribution under this Title, a claim arising from rescission
22 of a purchase or sale of a security of the debtor," I'm leaving
23 out a few words, "for damages arising from the purchase or sale
24 of such a security, shall be subordinated to all claims or
25 interests that are senior to or equal the claim or interest

1 represented by such security, except that if such security is
2 common stock, such claim has the same priority as common
3 stock."

4 What that means is that if you have a claim for
5 damages or for rescission by reason of your acquisition of the
6 GM stock, it's at the same level as common stock. The reason
7 for that provision, if I can digress, is that otherwise, people
8 who were defrauded when they acquired the stock would have a
9 way of bootstrapping those claims ahead of other stockholders
10 and would be boosting them up to the creditor level. And
11 Congress made the decision that that's not fair.

12 So for those reasons, I'm required to and do sustain
13 the debtors' objection, Mr. Radke. And I'm going to direct the
14 debtors here to settle an order. Settling an order means
15 submitting a proposed order to the Court for the Court to look
16 at and ultimately sign if he agrees with it or she agrees with
17 it.

18 And you'll have an opportunity to comment on whether
19 or not that form of order fairly and faithfully implements my
20 ruling. If you do not object to the form of the order, that
21 doesn't affect your right to appeal. Your time to appeal this
22 determination, if you choose to appeal it, will run from the
23 date that the resulting order is entered, and not from the date
24 that I am dictating this decision.

25 However, you should be aware that in bankruptcy cases,

1 the time to file an appeal is shorter than it is in other
2 federal litigation. It's fourteen days. So when that order is
3 entered, if you do decide you want to appeal my determination,
4 you may want to consider that deadline, because in the great
5 bulk of cases, those deadlines are enforced.

6 Now, I don't suspect that you're going to be very
7 happy with that ruling Mr. Radke, but you have to understand
8 that I thought about it and that I am ruling as I'm required to
9 do under the law. And I will say once more, at the risk of
10 repetition, I well understand how hard this case has been on
11 stockholders like you, many others as well, but on you as well.

12 With that said, Mr. Radke, you're free to either stay
13 on the line or drop off as you prefer. And Mr. Smolinsky, I'll
14 hear you on the next matter.

15 MR. SMOLINSKY: Thank you, Your Honor. Also on the
16 147th omnibus objection, the last responder is Dale Spirnak,
17 who submitted a letter that is in your book. And his assertion
18 is that General Motors fraudulently misrepresented the
19 viability of the company.

20 I rely on my prior arguments, in particular 510(b),
21 which would cause this claim to be consti -- it would
22 constitute an equity claim as well.

23 THE COURT: My phone log shows Mr. Spirnak as having
24 signed up for the call. Are you on, Mr. Spirnak?

25 MR. SPIRNAK: Yes, Your Honor.

1 THE COURT: Would you like to be heard?

2 MR. SPIRNAK: Yes, Your Honor.

3 THE COURT: Go ahead.

4 MR. SPIRNAK: Okay. My name is Dale Spirnak. And my
5 position is that GM of course had misrepresented its economic
6 viability and financial position. I know several months, even
7 before the bankruptcy, the former CEO stated he had over ten
8 million dollars in cash, there's nothing to worry about.
9 However, in reality, it appears that GM knew its stock was
10 essentially worthless, and yet allowed a potentially worthless
11 financial instrument to remain in a 401(k) retirement program.

12 They took out other risky investments but chose to
13 leave theirs in there as if everything was okay. And this
14 retirement program used to be called a savings stock purchase
15 program. We held actually here as stock at the time, Fidelity
16 became a manager of it maybe around ten years ago or so. I'm
17 estimating. They changed it to a stock fund which was about
18 ninety-five percent stock and five percent cash. State Street
19 Bank was the fiduciary of GM stock. And without our knowledge
20 and for the betterment of GM, State Street Bank liquidated all
21 the shares of stock in the fund without our knowledge. And
22 Fidelity was complicit in this transaction.

23 I know I had called that man. And based on everything
24 it was fine. But it certainly was not fine. Everything was
25 liquidated for GM's benefit and not for the benefit of the

1 people who were investing. And I know your -- I was listening
2 to you about these laws. It's unfortunate. I was given the
3 impression that the powerful get taken care of and the honest
4 people, you know, you're left dangling in the wind. I hate to
5 put it that. I'm saying it with all due respect to you, Your
6 Honor.

7 But I still think this is a fraud and
8 misrepresentation at the highest level. And I think if this is
9 allowed to stand then all 401(k)s are vulnerable. As far as
10 I'm concerned, my 401(k) was stolen from me. I think you're
11 going to set a precedent to allow that to happen in the future.
12 And thank you for letting me speak my say in court, sir.

13 THE COURT: Very well. Mr. Smolinsky, do you wish to
14 be heard further?

15 MR. SMOLINSKY: I have nothing further, Your Honor.

16 THE COURT: Okay.

17 MR. SPIRNAK: Your Honor?

18 THE COURT: Yes. I will now rule, Mr. Spirnak. And
19 unfortunately, the facts of your situation are very, very
20 similar to those of Mr. Radke, whose claim I just ruled on.
21 And they have to be dealt with the same way.

22 Once again, I don't take any position on your rights
23 against the plan or Fidelity or in this case, State Street. At
24 one time, State Street might have been affiliated with Fidelity
25 or it may just have been in the same city. I'm not sure. But

1 in any event, my ruling doesn't affect your rights, if any,
2 against them.

3 But it is impacted by the same section of the
4 Bankruptcy Code, 510(b) that I ruled on a moment ago. In
5 substance your claim is that you were defrauded by false
6 statements made either when you acquired your GM stock or when
7 it was sold or both. And those are exactly the kinds of claims
8 that are covered by 510(b).

9 So once again, I'll note that I feel very badly for
10 the stockholders in GM, but I'm constrained to act in
11 accordance with the law. The frustration of many members of
12 the American public with the way that financial institutions
13 acted in the last several years is another concern that I share
14 as an American, but which is above my pay grade to deal with as
15 a judge.

16 As a practical matter and as a legal one, I'm required
17 to make these calls based upon the law. And all of us who are
18 troubled by what happened back then have our remedies as
19 citizens in the voting booth. But they can't come into the
20 courtroom.

21 Mr. Smolinsky, I'm going to direct you to enter a --
22 excuse me, settle a similar order to the one that we just
23 talked about with respect to Mr. Radke. In each of the two
24 orders, I would like you to add a sentence that while it
25 doesn't put a bull's eye on anybody else, makes it clear that

1 I'm only ruling on the debtor. So put in a sentence that says
2 in substance that this order is without prejudice to the
3 rights, if any, that the claimant has against any third party
4 other than Motors Liquidation Company.

5 And once again, the time to appeal will run from the
6 time of the resulting order, and not from the time of this
7 dictated decision. Finally -- excuse me for just a second.
8 Let me finish my thought.

9 MR. SPIRNAK: Okay.

10 THE COURT: And that is that because I am making
11 reference to my earlier more extensive ruling with Mr. Radke,
12 if there is an appeal, the record on appeal should include not
13 just what I'm saying with respect to Mr. Spirnak, but also my
14 earlier ruling with respect to Mr. Radke.

15 Okay, Mr. Spirnak, you wanted to say something further
16 I think?

17 MR. SPIRNAK: Yes, please. This time to appeal, is
18 there going to be a date on a letterhead, for example, that I'd
19 know when the starting time is?

20 THE COURT: Well, there's going to be an electronic
21 filing on the docket which will reflect when it's entered. Do
22 you have Internet access, Mr. Spirnak?

23 MR. SPIRNAK: Well, I just have a new provider, so I'm
24 a little worried about getting the proper information through
25 the Internet.

1 THE COURT: Okay.

2 MR. SPIRNAK: My provider has changed in the past few
3 days.

4 THE COURT: Mr. Smolinsky, do me a favor. When the
5 order is entered, detail one of your paralegals or staff to
6 give Mr. Spirnak a call to tell him that.

7 Mr. Spirnak, for that to happen, you've got to meet
8 him halfway and provide Mr. Smolinsky with a phone number that
9 he can use. Do you have voice mail on that line?

10 MR. SPIRNAK: Yes, I do.

11 THE COURT: Okay.

12 MR. SPIRNAK: Are you ready?

13 THE COURT: Yes, go ahead.

14 MR. SPIRNAK: Okay. My home phone number is 412-461-
15 5195. There is voice mail on that line.

16 THE COURT: Fair enough. I notice that that's also
17 the phone number that's reflected on my telephone appearance
18 log.

19 MR. SPIRNAK: Yes, that's the phone I'm on now
20 currently, sir.

21 THE COURT: Okay. Thank you very much Mr. Spirnak.
22 I'm going to tell you the same thing I told Mr. Radke. You're
23 free to drop off the line if you wish or you can stay on.

24 MR. SPIRNAK: Thank you, sir.

25 THE COURT: Very well. Have a good day.

1 MR. SPIRNAK: You too, sir.

2 THE COURT: Mr. Smolinsky?

3 MR. SMOLINSKY: Your Honor, that concludes all matters
4 on the 147th omnibus objection to claims. Item number 2 on the
5 agenda is the debtors' 148th omnibus objection to claims, also
6 an objection seeking to reclassify claims for equity interests.
7 I'll note, Your Honor, and I apologize, that the response in
8 your book is actually a response of Thomas Jarusinski, where
9 the schedule to the motion lists FBO Patricia Jarusinski.
10 Patricia and Thomas Jarusinski filed numerous claims for either
11 equity or for welfare benefit claims. So, Your Honor, if
12 you're following along in the book, behind this objection is
13 the improper response. The response that perhaps you should be
14 looking at is one that's in your book behind tab 4A.

15 THE COURT: Well, I'm not following along with the
16 book as we go on, but I understand the underlying concept.

17 MR. SMOLINSKY: Okay. So just to quickly read the
18 letter, it's two sentences, from Patricia Jarusinski. It says,
19 "To Whom this Concerns, I proudly purchased General Motors
20 stock to fund our retirement. I seek settlement for my claims
21 of loss of value and dividend income due to the bankruptcy
22 situation for General Motors. I want my stock ownership, which
23 represents my belief in and loyalty to the company -- my
24 husband worked for thirty-seven years -- to be acknowledged."

25 To the extent that this is an objection, we, of

1 course, are sympathetic, but nevertheless must object to the
2 claim and seek to reclassify it as an equity interest.

3 THE COURT: I understand. My phone log doesn't
4 reflect her as being on the line. Was that Jarusulsky?

5 MR. SMOLINSKY: Jarusinski.

6 THE COURT: Jarusinski, excuse me. Ms. Jarusinski,
7 are you on the line?

8 Record will reflect no response. And it's obvious to
9 me by looking out there that she's not in the courtroom either,
10 but for the sake of good order, I'll ask is anybody here on
11 behalf of Ms. Jarusinski?

12 All right. No response. Mr. Smolinsky, I need to and
13 do expunge this claim for the reasons that I stated in earlier
14 hearings in this case and earlier today. And I'll need you to
15 settle an order implementing this ruling at your convenience.

16 MR. SMOLINSKY: Yes, Your Honor. Thank you. And that
17 completely resolves omnibus claims motion number 148.

18 Item number 3 on the agenda is the debtors' 151st
19 omnibus objections to claim. Also an objection for claims that
20 assert equity interests. There are two informal responses, one
21 by Lindell Estes and one by Barney Rosso that we wish to go
22 forward with. We have not received any documentation or
23 writings supporting the objection.

24 THE COURT: All right. Are the claimants on the
25 phone? I don't see them on my log, but let me ask.

1 No response. Or are they represented in the
2 courtroom?

3 Again, no response.

4 MR. SMOLINSKY: For the record, Your Honor, we did
5 send a letter to both of them advising them of today's hearing.

6 THE COURT: Okay. The claims are expunged.

7 MR. SMOLINSKY: Thank you, Your Honor.

8 Item number 4, the debtors' 152nd omnibus claims,
9 there are two responses that are going forward. One is
10 Patricia Jarusinski, the same party that we discussed earlier,
11 and the second is Bauer-Rollandin -- Nelly Bauer-Rollandin.
12 She had stated in her letter which was addressed to Weil
13 Gotshal, that she will probably not appear at the hearing and
14 asked that we hand up the letter.

15 I did notice that it is docketed, so I don't know if
16 Your Honor needs another copy of that letter. These are equity
17 interest claims for the same reasons stated before.
18 Unfortunately the Bankruptcy Code dictates and the plan
19 dictates that we need to reclassify these claims as equity
20 claims.

21 THE COURT: And equity claims need to be expunged for
22 reasons that I've now stated both in earlier hearings and this
23 Chapter 11 case and earlier this morning. Settle an order
24 accordingly, Mr. Smolinsky.

25 MR. SMOLINSKY: Thank you, Your Honor. And that

1 completely resolves omnibus 152.

2 Item number 5 on the agenda is an objection -- the
3 153rd omnibus objection. We were going to go forward with the
4 claims of Daniel Plouffe. But as we notified your chambers,
5 that matter has been adjourned at Mr. Plouffe's request.

6 Item number 6 on the agenda, the debtors' 154th
7 omnibus objection, this is also a claim seeking to reclassify
8 equity claims asserting equity interests. The matter is going
9 forward with respect to one response, and that is by Carroll
10 Waters.

11 THE COURT: Okay. Now, here I do show Carroll Waters
12 on my phone log. Do you know if Carroll -- which is apparently
13 with two L's, is a guy or woman?

14 MR. SMOLINSKY: I do not know, Your Honor.

15 MR. WATERS: It's a man.

16 THE COURT: Okay. Mr. Waters --

17 MR. WATERS: Yes.

18 THE COURT: -- do you wish to be heard?

19 MR. WATERS: Well, I guess I can't say much.

20 Actually, my name is Carroll R. Waters. But from what I've
21 heard you say before and so forth, and the ruling and the law
22 that you have to rule under and so forth, that it doesn't sound
23 like there's much light at the end of the tunnel, actually no
24 light. The door's been closed automatically.

25 But I will say this. I mean, I worked for General

1 Motors for many years. And candidly, I knew how they were
2 operating and so forth, and the reason I invested with them is
3 I entrusted these executives to get my savings. But apparently
4 they carelessly mishandled it and also took a great hundred
5 year old company and ran it into bankruptcy. I think their
6 reckless judgment broke the agreement they had with me as well
7 as with all of the other investors. I don't know what they
8 hope to seek in the future by doing this. It certainly doesn't
9 put any kind of precedent and any kind of regard for their
10 standing in the global industry.

11 I don't know if I can say much more, Your Honor. I've
12 heard your rulings, so I've got a hunch what I'm going to get.
13 That's what I have to say.

14 THE COURT: All right. Thank you.

15 Once again, I do well understand the frustration and
16 perhaps even anger of former GM stockholders and perhaps even
17 especially employees who invested in the company they were
18 working for, looking to their management to steer the company
19 appropriately.

20 But with that said, as you understood, Mr. Waters, I
21 am constrained by the requirements of the law. And I
22 necessarily must expunge the claim for the reasons that I
23 stated in earlier hearings in this case and in my earlier
24 rulings with respect to Mr. Radke and Mr. Spirnak.

25 So once more, please, Mr. Smolinsky, settle an order

1 in accordance with this ruling.

2 MR. SMOLINSKY: Yes, Your Honor. Item number 7 on the
3 agenda is the debtors' 155th omnibus objections to claim. Also
4 an objection seeking to disallow claims for equity interests.
5 The agenda reflects two claims going forward, the Hugo Anderson
6 claim and the Daniel Plouffe claim. As I indicated earlier, we
7 have adjourned the matter, I believe to August 16th with
8 respect to Mr. Plouffe. So we wish to go forward on the Hugo
9 Anderson claim.

10 Hugo Anderson submitted a letter. There were no
11 specifics as to why he believes a claim as opposed to an equity
12 interest is appropriate.

13 THE COURT: Okay, Mr. Anderson, my phone log shows you
14 having signed up on the call. Are you on?

15 MR. ANDERSON: Yes, Your Honor.

16 THE COURT: Okay. Would you like to be heard?

17 MR. ANDERSON: Yes, Your Honor.

18 THE COURT: Okay, go ahead.

19 MR. ANDERSON: Yeah. Just like the prior guy said,
20 you've got to go by -- I heard your past rulings, whatever.
21 The only comment I wanted to make is, I worked for GM for 41.3
22 years and had 80,000 invested in GM. And it wasn't in their
23 401(k) plan, but I sent you a letter. I bought GM stock at
24 forty dollars down to five around 2/07. It's now -- you know,
25 it's worthless, as quite a bit of my retirement. And I feel

1 like what I read in some of the other people's statements and
2 GM misrepresented itself like the board of directors and the GM
3 executives in saying that, you know, they were going to get a
4 bail out from the government and not have to go bankrupt. And
5 you got to go by the, I guess, the corporate bankruptcy code,
6 the laws. But I guess I sort of feel that if none of these
7 shareholders are going to get anything back, the corporate
8 bankruptcy code should be changed.

9 I mean, common stockholders have been losing money
10 every since they started red alerts. I can remember in seventh
11 grade math class talking about it, you know. And preferred
12 stockholders, I guess, in this case, are going to get ten
13 percent of their money back, where common stockholders are not
14 going to get anything. But preferred stockholders get a
15 guaranteed high dividend where a common stockholder, you know,
16 they're hoping the stock will go up and I get a smaller
17 dividend.

18 But I just feel GM misrepresented stockholders in
19 saying they're going to get a government bail out without going
20 bankrupt. And, you know, I can't prove it, but I'm sure the
21 board of directors and GM executives, GM stock paid -- you
22 know, they had inside information, and I'm sure that they got
23 rid of their stock, you know, bailing out for forty dollars
24 down to five, and I just -- I hung on even when in it went into
25 bankruptcy, because you know, I kept -- the stock kept going

1 down and I figured I would end up getting something. But I
2 don't know if there's any possibility that -- I think the GM
3 board of directors and executives, you know, misrepresented
4 having any possibility that maybe the common stockholders could
5 have a class action suit or whatever.

6 I just feel that the preferred stockholders, they're
7 not getting as much dividend as they did. But I should -- I
8 think that all the debtors (sic) should, you know, get the same
9 percentage. But I guess, you know, that's not the way the laws
10 read. I just wish they'd change the laws and I just wanted my
11 day in court. And that's all I have to say, sir -- Your Honor.

12 THE COURT: I understand, sir. And again, as I'm -- I
13 think you said you understood, I'm required to live by the
14 requirements of the law as it's been written. And that
15 requires me to rule the same way. I appreciate your courtesy
16 and your respect, Mr. Anderson. But as I said, the ruling is
17 one as to which my hands are tied.

18 So once again, Mr. Smolinsky, you'll have to settle an
19 order in accordance with Mr. Anderson's situation as well. And
20 Mr. Anderson, the time to appeal that order will be from the
21 date that it's entered. So keep your eyes peeled for that.
22 It'll be on the Internet.

23 MR. ANDERSON: How will I know that, sir?

24 THE COURT: Mr. Smolinsky, again, as a favor to me, I
25 would appreciate it for these mom and pop folks, that you

1 detail a member of your staff to give them a call when the
2 order is entered.

3 Mr. Anderson, I show your phone number as 269-694-
4 6393. Is that your home phone?

5 MR. ANDERSON: Yes, Your Honor.

6 THE COURT: And do you have a voice mail or an
7 answering machine on that in case you're not home.

8 MR. ANDERSON: No, I don't.

9 THE COURT: Do you have an e-mail address?

10 MR. ANDERSON: Yes.

11 THE COURT: Would you provide that to Mr. Smolinsky,
12 please?

13 MR. ANDERSON: Yes. It's just
14 hugoanderson@hotmail.com.

15 THE COURT: Is there any space or punctuation or
16 underline or anything like that between the Hugo and the
17 Anderson?

18 MR. ANDERSON: No, it's just hugoanderson, all
19 together with -- in small letters.

20 THE COURT: Okay. Thank you. Mr. Smolinsky, I know
21 the law doesn't require this, and you're doing me a favor, but
22 for these mom and pop stockholders, I would appreciate you
23 doing it.

24 MR. SMOLINSKY: We're happy to, Your Honor.

25 THE COURT: Okay. Thank you.

1 MR. SMOLINSKY: May I respectfully request, just so
2 the record is clear, that Your Honor, incorporate by reference
3 the Radke decision and the Spirnak decision to all of the
4 matters on the calendar today relating to omnibus objections to
5 equity claims.

6 THE COURT: Of course. Request granted.

7 MR. SMOLINSKY: Thank you, Your Honor.

8 The next matter on the calendar is item number 8.
9 This is the debtors' 169th omnibus objection to claims. This
10 is an objection to claims of welfare benefit by retirees and
11 former salaried and executive employees.

12 Your Honor, you likewise addressed these types of
13 claims in the past. GM Corporation has, in the past, amended
14 and modified its executive plans from time to time. The right
15 to do so is clearly spelled out in the plans themselves. There
16 have been a number of courts that have written on this issue,
17 in particular, Sprague v. General Motors Corporation --

18 THE COURT: Out of the Sixth Circuit?

19 MR. SMOLINSKY: Yes, that's correct, Your Honor. The
20 Sixth Circuit decision, which found that plans can be freely
21 modified and there has to be some pretty strong evidence
22 otherwise in order to vest benefits. Likewise, Moore v. Metro
23 Life Insurance Company, which is a Second Circuit case found
24 similar to Sprague

25 In this 169th omnibus objection, we wish to go forward

1 with respect to the Kendziorski claim. That's
2 K-E-N-D-Z-I-O-R-S-K-I. Melvin Kendziorski. For the reasons
3 stated above, we believe that this claim should be disallowed
4 as not being properly asserted.

5 THE COURT: Okay. Was that one claimant or more than
6 one, Mr. Smolinsky? It came by kind of fast.

7 MR. SMOLINSKY: It's one. Melvin J. Kendziorski.

8 THE COURT: Okay. Mr. Kendziorski, I don't see you on
9 my phone log. Are you on the phone?

10 No response. And I see my courtroom. But I'll do it
11 anyway: anybody here on behalf of Mr. Kendziorski in the
12 court?

13 No response. Mr. Smolinsky, I'm constrained to and do
14 expunge the claim for the reasons that you articulated and for
15 reasons that I stated earlier -- much earlier in this case. In
16 fact, I think it was back at the time that there was a request
17 for a committee to be appointed for people with similar
18 concerns. And accordingly, your motion to expunge is granted.

19 If you wish, you may designate as part of the record
20 for any appeal, my earlier statements and rulings on the
21 subject.

22 MR. SMOLINSKY: Thank you, Your Honor. Including the
23 statements made on the record of the June 22, 2011 hearing?

24 THE COURT: Yes, sir.

25 MR. SMOLINSKY: Thank you. Number 9 on the agenda is

1 the debtors' 176th omnibus objections to claim. That's also a
2 motion relating to welfare benefit claims. There are two
3 matters going forward. One is likewise an informal objection
4 interposed by Melvin J. Kendziorski. And the second is Richard
5 Knoth, K-N-O-T-H. Is Mr. Knoth on the phone?

6 THE COURT: I see no indication that he's signed up,
7 but I will ask. Mr. Knoth, are you on the phone?

8 No response. Anybody here on behalf of Mr. Knoth in
9 the courtroom?

10 No response. You may continue, Mr. Smolinsky.

11 MR. SMOLINSKY: Your Honor, this objection is pretty
12 standard and consistent with other responses that we've seen.
13 I would note that the response itself does have a sentence on
14 page 3 that states, "There is little doubt that many GM
15 documents stated GM reserves the right to amend or terminate
16 benefit plans or similar language."

17 His assertion is that because he accepted early
18 retirement, that he should be entitled to lifetime benefits
19 that were in existence at the time of the voluntary
20 resignation. Given the fact that, as I stated before, the
21 plans were freely amendable and the case law supports those
22 modifications and amendments, we would ask that this claim be
23 expunged.

24 THE COURT: And there was no showing in his submission
25 that when he retired any separate additional document was

1 executed that would give him the rights that he now asserts?

2 MR. SMOLINSKY: No, Your Honor.

3 THE COURT: Okay. The claim must be expunged for the
4 reasons previously stated.

5 MR. SMOLINSKY: Thank you, Your Honor. And
6 Kendziorski, that's an informal response. I don't believe he's
7 here. But the same arguments hold.

8 THE COURT: And same ruling.

9 MR. SMOLINSKY: Thank you, Your Honor. That
10 completely resolves omnibus 176.

11 Item number 10, debtors' 177th omnibus objection to
12 claims, also welfare benefit claims objection. This is going
13 forward with respect to one claim of Alan C. Zak. For all the
14 reasons stated earlier, we wish to expunge this claim.

15 Your Honor, Mr. Zak filed a response that is virtually
16 identical to the response that was filed by Mr. Knoth. And
17 accordingly, we ask that that claim be expunged as well.

18 THE COURT: I see no indication of Mr. Zak having
19 signed up for the phone. Are you on, Mr. Zak?

20 MR. ZAK: Yes, I am, Your Honor. There was some
21 confusion in the process of the CourtCall, and I apologize that
22 you didn't have that information handy.

23 THE COURT: Well, you don't need to apologize to me,
24 but that's why I asked the question. I'll allow you to be
25 heard if you would like to be.

1 MR. ZAK: Thank you for the opportunity, Your Honor.

2 In late 1976 I was approached by the Buick division of General
3 Motors with the offer of employment. Cars were starting to be
4 made by computers, and that was my field of expertise, that and
5 electronics. They were looking for people with that kind of
6 background and experience in the automobile business at the
7 dealership level. I did not apply to them. They came to me.

8 At the time I was concerned because the salary they
9 were offering was a good bit less than what I was making in the
10 position that I currently held. When I discussed this with
11 them, the answer was that while GM paid less than other
12 employers, that the difference was made up with the benefits of
13 health care, insurance and retirement, during employment and on
14 into retirement. In their words, as a total compensation
15 package. And total compensation package, Your Honor, is a
16 quote.

17 These benefits would also include my wife and any
18 children. While my wife and I do not have children, we did not
19 know that at the time we would not. This was the main reason I
20 took the offer of working with General Motors, a combination of
21 salary and benefits that would protect my family while I was
22 employed with them and on into retirement.

23 As time went on, there were salary increases and
24 promotions in my career. Whenever the question arose of a
25 dollar figure or larger dollar figure and a salary increase,

1 whether associated with a promotion or not, that question was
2 always answered with a reference to the total compensation
3 package and the benefits I was and would be receiving.

4 In spring of 2008, at which point I accrued thirty-one
5 years of service with General Motors, there came an offer for
6 an early retirement package. Since my age was sixty, and I had
7 the years of service applicable to the program, after serious
8 thought I decided to accept the program. Included in this
9 package was life insurance for myself and my wife, health care,
10 eye care coverage, dental coverage and prescription coverage.

11 Within six months of the time my retirement became
12 effective, which was November 1, 2008, General Motors
13 substantially reneged on the agreement by discontinuing the
14 dental and eye care coverages, substantially modifying the
15 health care and prescription coverages, with extremely high
16 deductibles, and subsequently reducing the life insurance
17 coverages.

18 As evidenced by books written by former General Motors
19 employees, GM has never been a company to make quick decisions.
20 To make these changes in that short of a time after my
21 retirement indicates that these were being planned when I
22 agreed to the terms of the early retirement package. And my
23 question to you, Your Honor, is would this not constitute a
24 fraud? Offering one set of terms when they knew that they
25 would not be honoring them and would substitute a set of

1 inferior terms in just a short while.

2 There was no time -- at no time during my career with
3 them, was there any precedent for this possibility of not
4 honoring their commitments. And with that, Your Honor, I put
5 that to you as my reason for asking to be a part of this
6 settlement.

7 THE COURT: Mr. Smolinsky, you may respond.

8 MR. SMOLINSKY: Your Honor, obviously, I'm unaware of
9 all of the conversations that took place or the promises or the
10 timing of modifications of the plan. I would only say, and I
11 just want to read a sentence from Sprague v. General Motors
12 Corp., which is actually included in Mr. Zak's papers. The
13 quote is: "To vest benefits is to render them forever
14 unalterable. Because vesting of welfare plan benefits is not
15 required by law, an employee's commitment to vest such benefits
16 is not to be inferred lightly. The intent to vest must be
17 found in the plan documents and must be stated in clear and
18 express language."

19 So, Your Honor, I'm not aware of the timing of any of
20 the decisions that were made, but I would say that the plans at
21 all time maintained that right to modify them at any time and
22 for any purpose.

23 THE COURT: Mr. Zak, was anything given to you in
24 writing that promised these lifetime benefits as compared --

25 MR. ZAK: Unfortunately not that I have retained, Your

1 Honor.

2 THE COURT: All right. I do not believe, given the
3 Sprague determination by the Sixth Circuit Court of Appeals,
4 that I can issue a ruling contrary to that for the other
5 employees by reason of anything that was merely expressed
6 orally. And I don't think, on the state of the record, that I
7 can rule on any intentions that were not made in the form of
8 actual statements, but which may have been undisclosed
9 intentions.

10 In this case and others, when people have had
11 supplemental agreements in writing that can be fairly read as
12 trumping the plan as a whole, I have carved them out from
13 earlier rulings to hear further evidence, and at least in one
14 case, said that the supplemental written agreement would, in
15 fact, trump the plan that otherwise existed. But I don't have
16 a satisfactory basis for doing it on this state of the record.

17 Again, Mr. Zak, your claim is a variant of one that
18 unfortunately I've heard from quite a number of people, because
19 this case has been harsh on former retirees or on retirees and
20 former employees, just as it's been harsh on stockholders. But
21 unfortunately my ruling must be the same.

22 MR. SMOLINSKY: Your Honor, as a matter of disclosure,
23 as we have been winding our way through these claims, there
24 have been a handful of employees that have been able to show us
25 a letter that came from a distribution center that, unlike all

1 the other correspondence that GM ever issued, did not say that
2 these plans are subject at any time to modification or
3 termination. It simply says your benefit is X. And at some
4 point, we need to address that issue.

5 There was recently filed a case by certain retirees
6 against Met Life relating to letters that Met Life issued to
7 some former GM retirees. I don't believe that our position is
8 going to be any different with respect to this letter. I
9 believe under Sprague, unless there's a clear indication to
10 vest those benefits, that the absence of a reference to the
11 ability to terminate is not fatal. But I wanted to bring it to
12 Your Honor's attention, because I don't want Your Honor to
13 believe that we're going to spring this on you at some point
14 that there are letters out there.

15 THE COURT: Well, that's kind of why I asked the
16 question that I did, Mr. Smolinsky. Because I would like to
17 know whether there is a principle basis upon which Mr. Zak's
18 claim should be regarded as different than the others.

19 Do you know whether he -- I think he said he didn't
20 know if there was a -- well, I think he answered a different
21 question.

22 Mr. Zak, the question you thought I was asking, which
23 is what I thought I was asking is, is there a supplemental
24 letter that says you have particular benefits. Is that the
25 question you thought you were answering?

1 MR. ZAK: No, Your Honor. I was -- I thought I was
2 answering a question from you that asked if I had any written
3 proof as to the conversations I had over the years with my
4 supervisors that indicated that these benefits would be
5 ongoing.

6 THE COURT: Well, that's similar to what I was asking.
7 Because if there were a promise in writing, that would have, of
8 course, been such proof.

9 Basically, Mr. Smolinsky, I had assumed that Mr. Zak's
10 case was amongst those where GM had reserved the right to
11 modify. If there was a document that applied to him that
12 didn't have that but was merely silent, it may be that it's
13 controlled by that, but that isn't what I thought I was ruling
14 on. Do you know if we're in that category or not?

15 MR. SMOLINSKY: Your honor, we don't know. There are
16 a handful of those letters that we've seen that have been sent
17 to us as we go through these claims. There doesn't seem to be
18 any rhyme or reason as to date or names or locations. We've
19 asked New GM about it. And they continue to look into it, and
20 now that they were served recently with a copy of the Met Life
21 lawsuit. But it doesn't appear that anyone who retired after
22 the Sprague decision came out received any of these letters,
23 because people got very careful after the Sprague decision to
24 include that language.

25 So I can't say with any certainty whether that letter

1 was there. As I said before, I don't think that letter changes
2 the analysis because all of the plans include those -- that
3 language that plans are subject to modification or termination.

4 THE COURT: Well, I appreciate your candor. But by
5 the same token, I wonder if the more prudent thing to do,
6 because we are affecting, you know, a living human being here,
7 is to neither grant nor deny the motion to expunge to allow
8 another few weeks of inquiry to see whether he might be covered
9 by that or not. And then if he does have such a different kind
10 of letter applying to him, if you want to make the same motion
11 arguing that the law still requires it, you can do that. And
12 then he'll have the opportunity to respond and presumably
13 differ with you on that.

14 MR. SMOLINSKY: Your Honor, I'm told that the letters
15 that I was referring to relate only to life insurance, they
16 don't relate to any other benefit plan.

17 THE COURT: I see. Do you have any factual basis for
18 disagreeing with Mr. Smolinsky on what he just said, Mr. Zak?

19 MR. ZAK: No, I do not, Your Honor.

20 THE COURT: Okay. Then your motion will be granted
21 vis-a-vis the health benefits component, but will be continued
22 vis-a-vis the life insurance component.

23 MR. ZAK: I see. Thank you, Your Honor.

24 THE COURT: Okay. Your next matter, please, Mr.
25 Smolinsky?

1 MR. SMOLINSKY: I'm sorry, Your Honor, I'm just
2 finding my place.

3 THE COURT: Were you up to 178?

4 MR. SMOLINSKY: I believe we just tackled 178. Oh,
5 no --

6 THE COURT: Are we now up to 187?

7 MR. SMOLINSKY: -- no, you're right; 178 is also a
8 claim filed by Mr. Zak.

9 THE COURT: Okay.

10 MR. SMOLINSKY: I think the same ruling applies.

11 THE COURT: Is there anything other than what I
12 already dealt with, vis-a-vis Mr. Zak?

13 MR. SMOLINSKY: I do not believe so, Your Honor.

14 THE COURT: Okay. Then are we now up to the 187th?

15 MR. SMOLINSKY: Yes, Your Honor.

16 THE COURT: Go ahead.

17 MR. SMOLINSKY: We are going forward with McConnick
18 and McNutt.

19 THE COURT: Okay. Are any of those folks on the
20 phone? Anybody on their behalf in the courtroom?

21 Mr. Smolinsky, do you have any reason to believe that
22 they're in the category of those letters you were telling me
23 about, those --

24 MR. SMOLINSKY: I have no reason to believe that they
25 are.

1 THE COURT: Okay. Then your motion to expunge will be
2 granted for those folks. I have to deal with it that way. And
3 under those circumstances, we'll move on.

4 MR. SMOLINSKY: Thank you, Your Honor. Item number
5 14, that's debtors' 214th omnibus objection to claims -- I'm
6 sorry, I skipped one -- 13 --

7 THE COURT: What about the 210th and 211th?

8 MR. SMOLINSKY: I'm sorry, that was McConnick. We
9 also have McNutt on that 187th omnibus.

10 THE COURT: Okay. Then continue please.

11 MR. SMOLINSKY: Ms. McNutt submitted a one page
12 response. There are two paragraphs. The first paragraph
13 states, "Claimant McNutt has no direct and immediate access to
14 the funds under the plan and is subject to the plan's
15 administration by the debtor, its successors in interest, or
16 that of the plan trustees."

17 Paragraph 2 states, "Claimant has no knowledge whether
18 General Motors LLC has assumed sponsorship of the debtors'
19 claim nor has she received any notices of such sponsorship.
20 Claimant believes the plan is administered by Fidelity
21 Investments. The only notice claimant has received explaining
22 the plan has been from GM Benefits and Service Center."

23 We don't believe that that constitutes an objection to
24 the relief requested.

25 THE COURT: I agree. She's not -- I had called out

1 her name to confirm that she wasn't in the courtroom and on the
2 phone. Am I correct?

3 MR. SMOLINSKY: I believe so, Your Honor.

4 THE COURT: Ms. McNutt, are you here? No.

5 Objection sustained, because the basis for objecting
6 to the objection, if you will, isn't a legally cognizable one.
7 It doesn't state a defense.

8 MR. SMOLINSKY: Thank you, Your Honor. Just for the
9 record, we attempted to contact all claimants by phone. Ms.
10 McNutt did not provide a phone number. We did send a letter
11 and we tried using a reverse directory, but we couldn't find a
12 telephone number for Ms. McNutt.

13 THE COURT: I appreciate that. I understand. And
14 your efforts were satisfactory.

15 MR. SMOLINSKY: Thank you. Debtors' 210th omnibus
16 objections to claim. That's a claim going back for equity
17 interests. We seek to go forward with respect to Dennis and
18 Jill Gallaher.

19 THE COURT: I see Mr. Gall -- is it Gallagher or
20 Gallaher? Is it a typo on my log?

21 MR. SMOLINSKY: His letter says Gallaher, Your Honor.

22 THE COURT: Gallaher, right. Mr. Gallaher, are you on
23 the phone? Mr. Gallaher?

24 No response. Okay. This being a claim to expunge an
25 equity interest, I've spoken quite a bit on this today. The

1 ruling here has to be the same and it will be expunged.

2 MR. SMOLINSKY: Thank you, Your Honor. And just for
3 the record, the letter asserts that the claim is based on an
4 equity loan made to GM rather than a purchase of stock. But it
5 nevertheless is an equity interest.

6 THE COURT: Right.

7 MR. SMOLINSKY: Item number 14, debtors' 214th omnibus
8 objections to claim. Those are administrative proofs of claim
9 that were filed for equity interests. We are going forward
10 today with respect to Larry S. Massey, Stella Malles,
11 M-A-L-L-E-S, and Ryan D'Amour.

12 THE COURT: Okay. I do see a Mr. Massey and a Ms.
13 Malles on my phone log. Are either of you on the phone?

14 MR. MALLEES: Your Honor, my name is John Malles, I'm
15 representing my mother. She has poor hearing and would be
16 unable to attend these hearings. But she had a prepared
17 statement she wanted me to read.

18 THE COURT: Mr. Smolinsky, I assume you don't object?

19 MR. SMOLINSKY: I certainly don't object, Your Honor.

20 THE COURT: Go ahead, Mr. Malles.

21 MR. MALLEES: Good morning, Your Honor. In March of
22 2009 my uncle had passed away and he had a joint account with
23 my mother. And after his demise my mother inherited common
24 stock from General Motors however it went into intestate. And
25 during the time, she would have sold the stock, but she was

1 unable to sell the stock because it was intestate. General
2 Motors went into bankruptcy and I could not sell. General
3 Motors Liquidators acquired General Motors stock, and I could
4 still not sell General Motors Liquidators. So my mother, you
5 know, felt as though she fell into a situation where, you know,
6 due to other laws and whatnot, she was kind of more or less,
7 perhaps more unable to sell the stock due to the -- due to
8 having the account go into intestate status, where she was
9 unable to sell the stock. So she feels that she's entitled to
10 some type of compensation or at least to be able to keep it
11 without being reclassified, Your Honor.

12 THE COURT: Um-hum. Do you want to be heard, Mr.
13 Smolinsky?

14 MR. SMOLINSKY: Only to say that it sounds like
15 unfortunate circumstances, but it doesn't seem like General
16 Motors Corporation or Motors Liquidation Company are to blame
17 for this.

18 THE COURT: Yes. Well, the circumstances are, of
19 course, unfortunate, Mr. Malles. But I imagine that you were
20 on the phone when I had to rule on claims by other stockholders
21 earlier this morning.

22 MR. MALLES: Yes, Your Honor.

23 THE COURT: Unfortunately, some people's
24 circumstances, while they differ in terms of why they weren't
25 able to get rid of the stock at an earlier time, some because

1 they got bad advice, some because they got locked into probate
2 requirements, as yours seem to be, some that may have been for
3 other reasons still, ultimately are telling me that right now
4 they're stockholders and they want to get the compensation that
5 creditors are getting instead of the compensation, which of
6 course is zero, that stockholders are getting.

7 Once again, my hands are tied under the law. And
8 while once again, I feel the hardship on so many stockholders,
9 all of those that I've heard today are, you know, just middle
10 class Americans, there isn't anything I can do about it other
11 than to express my sympathy, because I'm constrained by my oath
12 to comply with the law.

13 So, this objection will be sustained and the claim
14 will be expunged. And once again, I'm going to ask you to
15 settle the order, Mr. Smolinsky, and to tell you, Mr. Malles,
16 that your family will be able to appeal if you choose to,
17 within the relatively short time the Bankruptcy Code provides,
18 which is fourteen days, not from today, but from the date that
19 that order is entered.

20 Mr. Malles, do you have Internet access so that you
21 can follow the docket?

22 MR. MALLES: I do.

23 THE COURT: Okay. Mr. Smolinsky, you're going to
24 first settle the order which means you're going to mail the
25 proposed order to Mr. Malles, which will give you a sense, Mr.

1 Malles, when you get that notice of settlement, that an order
2 may be following shortly thereafter. So especially do the
3 checking of the Internet then to note when your time to appeal
4 begins to run.

5 MR. SMOLINSKY: Your Honor --

6 MR. MALLES: Thank you, Your Honor. And my mother --
7 I will certainly take your rulings back to my mother, and I
8 think this will be a good closure to this unfortunate
9 situation. But I thank you.

10 THE COURT: Well, I appreciate that Mr. Malles. I
11 wish I would give you better than closure.

12 MR. MALLES: Thank you, sir.

13 MR. SMOLINSKY: -- Your Honor, Ms. Malles filed an
14 objection that relies on an argument under 502(d). I just want
15 to clarify for the record whether that argument -- that legal
16 argument is being withdrawn, just for purposes of the record
17 and potential appeals, because we did not address that legal
18 argument.

19 THE COURT: I'm not sure if I follow reliance on
20 502(d), Mr. Smolinsky. Is that your problem, that you don't
21 understand the basis --

22 MR. SMOLINSKY: I don't understand either.

23 THE COURT: Do you want to be heard further in any
24 way, Mr. Malles, beyond what you've already said.

25 MR. MALLES: I originally -- I read the -- I had read

1 the docket that came back and I was originally under the
2 assumption I had to produce a statement of law as opposed to
3 just a -- I thought I had to try to find, you know, another
4 case that had that problem. But I was -- I didn't -- I quoted
5 a statement out of 502(d) as opposed to 502(b), I believe,
6 which was incorrect.

7 THE COURT: Well, I'm certainly not going to find
8 fault with any of the non-lawyers who are trying to protect
9 their interest. I don't think you need to worry about that,
10 Mr. Malles.

11 MR. MALLES: Well, yes, sir, I am a non-lawyer and I
12 was just trying to -- but I certainly understand -- I certainly
13 understand your ruling as to this matter.

14 THE COURT: Okay. Thank you, sir.

15 MR. SMOLINSKY: Thank you for that clarification.

16 MR. MALLES: Have a nice day. Thank you.

17 THE COURT: Thank you.

18 MR. SMOLINSKY: That leaves us with the Massey and
19 D'Amour response. For the same arguments we believe that this
20 claim is an equity claim.

21 THE COURT: Mr. Massey are you on the line?

22 MR. MASSEY: Yes, I'm here, Your Honor.

23 THE COURT: Would you like to be heard, sir?

24 MR. MASSEY: Yes, I would. I heard your rulings
25 today, but at the time I bought this GM stock, I bought it in

1 good faith. On TV they were saying GM was not a world class
2 company and everything wasn't up to the standards of Toyota. I
3 knew this was wrong, because I went with GM all my life, and I
4 still do. And I knew they had a world class product and I knew
5 that it couldn't go under, so I bought some GM stock on 4/13.

6 And I really don't understand how I'm able to buy if
7 somebody knew this was going to happen. Who ever heard of
8 stock going to zero? And I wished for the best. I'm still
9 driving a vehicle -- GM vehicles, and I wish there was somebody
10 who could help me but -- that's all I have to say.

11 THE COURT: I understand. Mr. Smolinsky, do you wish
12 to respond in any way?

13 MR. SMOLINSKY: No, Your Honor. Only to say that in
14 April of 2009, the company had not yet made any determination
15 to file for Chapter 11 and was still attempting to do
16 everything it could to avoid that fate.

17 THE COURT: Um-hum. Okay. Well, I appreciate your
18 courtesy, Mr. Massey, and appreciate your recognition that I've
19 got to comply with the law. And once again, I want to express
20 my understanding of the frustration and maybe even anger of the
21 stockholder community in GM. And you've got to believe me when
22 I say that every one of these rulings makes me feel very badly.

23 But nevertheless, I've got to comply with the law, and
24 that's what I'm going to do. So I appreciate your courtesy and
25 your understanding Mr. Massey, but I must rule the same way in

1 your case as I did for the other stockholders.

2 And I'm going to ask you to settle an order
3 accordingly, Mr. Smolinsky.

4 Mr. Massey do you have access to the Internet?

5 MR. MASSEY: Yes, I do.

6 THE COURT: Okay. Then keep your eyes peeled for that
7 order. Your time to appeal will run from the time of the
8 resulting order and not from the time of my oral ruling today.

9 MR. MASSEY: Okay. Thank you, Your Honor.

10 THE COURT: Okay. Have a good day sir.

11 MR. MASSEY: Thank you.

12 MR. SMOLINSKY: Your Honor, at certain times in the
13 past you've asked us to provide for longer settlement periods
14 than we would typically use. Do you --

15 THE COURT: Well, you're quite right, I have, Mr.
16 Smolinsky, although I've regarded those as appropriate when the
17 issues were more debatable. If you want to do that
18 voluntarily, of course, I welcome that, but I'm not making you
19 do it.

20 MR. SMOLINSKY: Thank you, Your Honor. And Ryan
21 D'Amour, is he on the phone?

22 THE COURT: I don't see him on my log, but let me ask
23 you. Was that Dimore (ph.) or was it D'Amour?

24 MR. SMOLINSKY: D apostrophe, capital A, M-O-U-R.

25 THE COURT: Oh, okay. Mr. D'Amour, are you on the

1 phone?

2 No response. Anybody on Mr. D'Amour's behalf in the
3 courtroom?

4 No response. Go ahead, Mr. Smolinsky.

5 MR. SMOLINSKY: I don't believe Mr. D'Amour submitted
6 a written objection. I think it was an informal objection, so
7 we don't know what his position is, but we would ask, based on
8 Your Honor's prior rulings, that the claim be reclassified as a
9 pre-petition equity interest.

10 THE COURT: Yes. That request is granted.

11 MR. SMOLINSKY: Thank you, Your Honor. That concludes
12 the contested portion of the calendar. There's one uncontested
13 matter. It's the debtors' 211th omnibus objections to claim.
14 Those are tax claims assumed by General Motors LLC or New GM.
15 There is one remaining response, that's by Marion County
16 Treasurer. They have now agreed with New GM on the amount of
17 the taxes and they have no further objection to the
18 disallowance of this claim. And this would completely resolve
19 the 211th omnibus objection.

20 THE COURT: Okay. That's fine. Does it need to be
21 papered in any way, or is it self-effectuating?

22 MR. SMOLINSKY: Your Honor, I would like to submit an
23 order expunging that claim against the debtors.

24 THE COURT: Okay. See if you can agree upon a form
25 with Marion County. And if you can't you can settle it.

1 MR. SMOLINSKY: Thank you, Your Honor. That concludes
2 today's formal agenda.

3 THE COURT: Okay. I got the letter on behalf of Mr.
4 Williamson's office, and I read the accompanying report, but I
5 have no questions. So I don't think we need to spend any time
6 on that.

7 Mr. Williamson, are you on the phone, or anybody from
8 his office? I guess it's academic.

9 Okay. Then are we done for the day, Mr. Smolinsky?

10 MR. SMOLINSKY: Yes, sir.

11 THE COURT: Okay. Everybody have a good day. We're
12 adjourned.

13 MR. SMOLINSKY: Thank you.

14 (Whereupon these proceedings were concluded at 11:32 AM)

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I N D E X

RULINGS

	Page	Line
Debtors' objection to Mr. Radke's claim is sustained. Debtors will settle an order.	13	12
Debtors' objection to Mr. Spirnak's claim sustained. Debtors' will settle an order.	17	21
Debtors' objection to Ms. Jarusinski's claim sustained. Order will be settled.	21	13
Claims of Mr. Estes and Mr. Rosso are expunged	22	6
Claims of Ms. Jarusinski and Ms. Bauer-Rollandin in omnibus objection 152 are expunged	22	21
Claim of Mr. Waters is expunged. Order will be settled.	24	22
Mr. Anderson's claim is expunged. Order will be settled.	27	15
Radke decision and the Spirnak decision are incorporated by reference to all of the matters on the calendar today relating to omnibus objections to equity claims	29	6
Claim of Mr. Kendziorski is expunged.	30	18

RULINGS

		Page	Line
1			
2			
3	Claim of Mr. Knoth in Omnibus objection 176	32	3
4	expunged.		
5	Claim of Mr. Kendziorski in omnibus objection	32	8
6	176 is expunged.		
7	Mr. Zak's claim is denied re health benefits,	39	21
8	and continued re life insurance benefits.		
9	Objection to McConnick claim is	41	1
10	granted.		
11	Ms. McNutt's claim is expunged.	42	5
12	Claim of Mr. and Mrs. Gallaher expunged.	43	1
13	Claim of Ms. Malles is expunged. Order will	45	13
14	be settled.		
15	Claim of Mr. Massey is expunged. Order will	49	2
16	be settled.		
17	Mr. D'Amour's claim is reclassified as a	50	10
18	pre-petition equity interest.		
19	Claim of Marion County is expunged, by	50	24
20	agreement.		

C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Penina
Wolicki

Digitally signed by Penina Wolicki
DN: cn=Penina Wolicki, o, ou,
email=digital1@veritext.com,
c=US
Date: 2011.08.03 11:21:28 -04'00'

PENINA WOLICKI

AAERT Certified Electronic Transcriber CET**D-569

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: August 3, 2011